IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2) (b))

Writ Petition No. 449 (S/B) of 2003

Dr. Rajeev Singh Pal .....……. Petitioner

Vs.

State of Uttaranchal and six others. …….. Respondents.

Date of decision- 16.09.2003

For the approval of:-

Hon'ble Chief Justice S.H. Kapadia.

Hon'ble Mr. Justice Rajesh Tandon, J.

-Whether the order/judgment should be sent to the reporters for reporting? (Yes)

-Whether the reporters be allowed to see the judgment? (Yes)

Jt.P.P.S.

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Writ Petition No. 449 (S/B) of 2003

Dr. Rajeev Singh Pal,
Aged about 35 years
S/o Sri R.B.Pal,
Working on the post of
Medical Officer Incharge,
P.H.C. Chamba
Distt. Tehri Garhwal ……. Petitioner

Versus

State of Uttaranchal and
six others …… Respondents.

Sri C.D. Bahuguna, Advocate for the petitioner,
Sri K.P. Upadhayaya, counsel for the State.
Sri B.S. Verma, Standing Counsel, Government of U.P.,
Sri V.K. Bist, Advocate.

Coram: Hon'ble S.H. Kapadia, C.J.
Hon'ble Rajesh Tandon, J.

Date: 16.09.2003:

ORAL JUDGMENT [Per Hon. S.H. Kapadia, C.J.]

Petitioner seeks to challenge the validity of condition no.2 in the policy dated 11.06.2003 formulated by the Director General, Medical Health and Family Welfare, Uttaranchal, Dehradun, in the matter of nomination of Medical Officers of Uttaranchal cadre for Post Graduate Diploma Course from Government Medical Colleges of the State for the year 2003-04.

FACTS

On 27.08.1992, the petitioner was appointed on ad hoc basis to the post of medical officer for one year. He jointed post on 24.09.1992 at Almora. His selection was confirmed in 1996 by the Public Service Commissioner. Thereafter, he was posted at Primary Health Centre Sahaspur, district Dehradun on 17.1.1997. In July, 2003, he was transferred to Primary Health Centre Chamba, district Tehri Garhwal where he is continuing till date. After the creation of the State of Uttaranchal, he was allotted to the State of Uttaranchal by order dated 20.12.2000.

According to the policy of the State Goverbnment,medical officers are sent for training to various medical colleges within the State of Uttaranchal or outside. Certain seats in medical colleges are ear-market for that purpose. The object behind the policy is to increase the experience of the members of the service after specialisation in specified branches of medical science. Accordingly, medical officers are sent for t raining on Government expenses and they are treated as on duty while undergoing post-graduate diploma course.

On 11.06.2003, the impugned circular was issued by the Director General of Medical Health and Family Welfare, Uttaranchal Dehradun, whereby applications were invited from medical officers of provincial medical and health services of Uttaranchal. These medical officers were required to apply for nomination in P. G. diploma course from Government medical colleges situated in Uttaranchal. Nomination for P. G. diploma was to be made for sixteen seats in different subjects, and each candidate has to apply in three subjects. Pursuant to the impugned circular, the petitioner submitted his application before the Chief Medical Officer on 13.06.2003, who forwarded the application to the Director General, Medical Health and Family Welfare, Uttaranchal. In his application, the petitioner applied for nomination in three subjects, namely, diploma in clinical pathology, diploma in medical radiology and diploma in child health. After scrutiny, the Director General short-listed the candidates. By the letter dated 31.07.2003, the Secretary Medical and Health Services, Uttaranchal declared the results. Sixteen candidates were nominated for studying in P.G.diploma. The petition was not nominated. Threfore, he has filed the present petition.

Mr. Bahuguna, learned Advocate appearing on behalf of the petitioner contended that condition no.2 in the impugned circular dated 11.6.2003 was arbitrary. He argued that condition no.2 required the candidate to complete minimum period of five years in

Government service in inaccessible areas of Uttaranchal without any adverse entry. He submitted that this condition was arbitrary because it had no connection at all with the nomination of candidates for P.G.diploma course (training). He contended that the said condition was introduced for the first time in November, 2002 for providing special allowances to medical officers posted in the hilly region of the State. He contended that the said condition was good as far as payment of special allowance is concerned, but such condition has no relevancy, nor any connection in the matter of selection of candidates for P. G. diploma course (training). Mr. Bahuguna, learned Advocate for the petitioner next contended that the above condition no.2 in the circular dated 11.06.2003 was also arbitrary as that condition contemplated weightage criteria as the sole basis for selection in P.G. diploma course, ignoring altogether competitive evaluation of merits of the candidates through entrance examination. In this connection, he has placed reliance on the judgment of the Supreme Court in the case of State of M.P. and others Vs. Gopal D.Tirthani and others reported in 2003(5) Supreme 473. Mr. Bahuguna argued that it is now settled by the Supreme court that regulation framed by the Medical Council of India have the force of law. He pointed out that under regulation 9 framed by the Medical Council of India, students for P.G.medical courses have to be selected directly on the basis of academic merits; that in the present case regulation 9 has been violated because condition no.2 of the impugned circular contemplates nomination only on the basis of the candidates completing five years in Government service in the inaccessible areas of Uttaranchal. He contends that condition no.2 ignores evaluation of merits to be judged through entrance examination. He, therefore, contended that condition no.2 in the impugned circular violates Article 14 of the Constitution.

Before going to the argument, condition no.2 of the impugned circular dated 11.06.2003 is required to be quoted as under:

> "That the candidate has completed a minimum period of 5 years in Government service in the inaccessible/most inaccessible area of Uttaranchal, without any administrative adverse entry. A candidate who has completed 3 years service in inaccessible/most inaccessible places of Uttaranchalal may also apply provided he has five years regular service in his credit."

We do not find any merit in this petition. Firstly, application for nomination of medical officers of Uttaranchal cadre for Post Graduate diploma course were invited under the relevant circular dated 11.6.2003. The petitioner applied under the impugned policy. He was not selected. Therefore, he has now filed this petition alleging that the policy of allotment in Government Medical Colleges of U.P. was arbitrary. Secondly, it has been argued on behalf of the petitioner that condition no.2 has no relevancy in the matter of nomination of candidates for post graduate diploma course. We do not find any merit in this argument. In this case we are concerned with the case of doctors, who are in service in provincial medical health services. They are in-service candidates. They are medical officers of the State of Uttaranchal. This State is a new State. It has several inaccessible areas. In those areas, there are no proper medical facilities. In such areas, doctors are required. When a medical officer is posted in such areas, he has to make certain sacrifices. On the other hand, the Government policy is to encourage medical officers to go to such inaccessible areas. When a medical officer is posted in such hilly areas, he suffers a draw back in competing with open category candidates vis-à-vis theoretical knowledge. Therefore, condition no.2 quoted above is not arbitrary as alleged. Hence, we reject the above argument of the petitioner.

Lastly, we may point out that the judgment of the Supreme Court in the case of State of M.P. Vs. Gopal D.Tirthani (supra) has no application to the facts of this case. In the case before us, the petitioner has challenged the validity of condition no.2 in the Circular dated 18.06.2003 as invalid. His contention is that without entrances examination, nomination of candidates on the basis of work experience in the inaccessible areas of Uttaranchal was arbitrary in view of the judgment of the apex Court in State of M.P. Vs. Glopal D. Tirthani (supra). We do not find any merit in this argument. As stated above, the State of Uttaranchal has large number of hilly areas. They are inaccessible. Doctors are required in those areas. In the case before the Supreme Court, the State of M.P. had framed two separate Rules for holding exams, one set of rules dealt with exams for in-service candidates and the other set of Rules were for conducting exams for open category candidates. It was held by the Apex Court that the Regulations framed by Medical Council of India contemplated only one common Entrance Examination and therefore the Apex Court did not allow the State to have two exams. In the circumstances, the above case has no application to the present case.

For reasons given above, Clause (2) is relevant in the context of the State of Uttaranchal which is recently created and in which medical facilities are almost absent in hilly areas. Even public interest litigation writ petitions are pending in this Court where absence of medical facilities and in-service doctors, even in Nainital, is the grievance. Hence at this nascent stage of the State, it cannot be said that Clause 2 is irrelevant. Even allotment of cadres between the States of U.P. and Uttaranchal are not finalized. There are enormous problems to be solved. Hence, we are not inclined to interfere under Article 226. The State Government can even move Central Government/Medical Council of India in this regard.

Subject to above, the writ petition is rejected.

(Rajesh Tandon, J.) **(S.H.Kapadia, C.J.)**

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